

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>In re:</b>	§	
	§	
<b>Bendco, Inc.,</b>	§	<b>Case No. 18-30849-H2-11</b>
	§	
<b>Debtor.</b>	§	<b>Chapter 11</b>

**Opposed Emergency Motion by the United States of America to Stay January 3 Hearing**

**Pursuant to BLR 9013-1:**

**This motion seeks an order that may adversely affect you. If you oppose the motion, you should immediately contact the moving party to resolve the dispute. If you and the moving party cannot agree, you must file a response and send a copy to the moving party. You must file and serve your response within 21 days of the date this was served on you. Your response must state why the motion should not be granted. If you do not file a timely response, the relief may be granted without further notice to you. If you oppose the motion and have not reached an agreement, you must attend the hearing. Unless the parties agree otherwise, the court may consider evidence at the hearing and may decide the motion at the hearing.**

**Represented parties should act through their attorney.**

**Emergency relief has been requested. If the Court considers the motion on an emergency basis, then you will have less than 21 days to answer. If you object to the requested relief or if you believe that the emergency consideration is not warranted, you should file an immediate response.**

**To the Honorable David R. Jones,  
Chief United States Bankruptcy Judge:**

The United States of America (the “United States”), acting on behalf of its Internal Revenue Service (the “IRS”), moves the Court to stay the January 3 hearing.

**Summary**

The United States moves for a stay due to a lapse in appropriations. Counsel for the United States has conferred with counsel for the Debtor, and counsel for the Debtor is opposed.

Emergency consideration is warranted because this motion is filed less than twenty-one days before the January 3, 2019, hearing. Counsel for the United States certifies that the facts stated herein are true and correct to the best of his knowledge.

### **Background**

On October 25, 2018, the Court scheduled a status conference on January 3, 2019, at 2:00 p.m. [Doc. No. 84].

At the end of the day on December 21, 2018, the appropriations act that had been funding the Department of Justice (“DOJ”) expired and appropriations to the DOJ lapsed. The same is true for several other Executive agencies, including the Department of the Treasury. The DOJ does not know when funding will be restored.

Absent an appropriation, DOJ attorneys and employees of the IRS are prohibited from working, even on a voluntary basis, except in very limited circumstances, including “emergencies involving the safety of human life or the protection of property.” 31 U.S.C. § 1432.

The United States requests a stay of the January 3, 2019, status conference until appropriations have been restored to the DOJ. If the Court grants this motion, the United States will notify the Court once funds have been appropriated for the DOJ. The United States requests that, at that point, all current deadlines for the parties be extended commensurate with the duration of the lapse in appropriations.

Counsel for the United States conferred with counsel for the Debtor concerning the relief requested by telephone on January 2, 2019. Debtor’s counsel is opposed to the requested stay.

Accordingly, the United States requests that the Court stay the January 3 status conference until funding has been restored to the DOJ.

Dated: January 2, 2019.

Respectfully submitted,

RYAN K. PATRICK,  
United States Attorney

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**Certificate of Service**

The undersigned certifies that he served a true and correct copy of the foregoing Motion on the parties receiving ECF notice in this case by ECF notification on January 2, 2019. Due to the lapse in funding, it is not practical for the United States to serve this Motion by mail on parties not receiving ECF notification.

s/ Richard A. Kincheloe  
Richard A. Kincheloe  
Assistant United States Attorney